

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	Case No. 3:20-cv-1109
Plaintiff,)	
)	
v.)	
)	
JAMES A. FLEMING,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, at the direction of the Attorney General and with authorization of a delegate of the Secretary of the Treasury, pursuant to 26 U.S.C. § 7401, brings this civil action to reduce to judgment unpaid federal tax liabilities owed by James A. Fleming (“Fleming” or the “defendant”). For its complaint, the United States alleges as follows:

JURISDICTION AND PARTIES

1. The district court has jurisdiction pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1331, 1340, and 1345.
2. The defendant resides in Maryville, Illinois, within the jurisdiction of this Court.

COUNT ONE
(Claim Against Fleming to Reduce Income Tax Liabilities to Judgment)

3. A delegate of the Secretary of the Treasury made assessments against the defendant for income taxes and penalties for the periods, on the dates, and in the amounts described below. These liabilities have balances due as of October 19, 2020, including assessed and accrued late-filing or late-payment penalties under 26 U.S.C. § 6651 or penalties for failure to make estimated tax payments 26 U.S.C. § 6654, costs, and statutory interest, and after applying any abatements, payments, and credits, as follows:

Tax Period Ending	Assessment Date	Assessment Type	Amount Assessed	Balance Due as of 10/19/2020
12/31/2006	2/14/2011	Tax	\$36,613.92	\$74,552.16
		Failure-to-Pay Penalty	\$7,198.00	
12/31/2007	10/25/2010	Tax	\$43,751.84	\$84,516.27
		Failure-to-Pay Penalty	\$8,863.00	
12/31/2008	10/25/2010	Tax	\$20,580.14	\$37,423.43
		Failure-to-Pay Penalty	\$4,101.00	
Total				\$196,491.86

4. Notice of the liabilities described in paragraph 3 was given to, and payment demanded from, the defendant.

5. Despite proper notice and demand, the defendant failed, neglected, or refused to fully pay the liabilities described in paragraph 3, and after the application of all abatements, payments, and credits, he remains liable to the United States in the amount of \$196,491.86 plus statutory additions and interest accruing from and after October 19, 2020.

COUNT TWO
(Claim Against Fleming to Reduce Trust Fund Liabilities to Judgment)

6. The defendant was the sole corporate officer (president) and sole shareholder of Guarantee Comfort and Energy, Inc. (“the Company”).

7. The Company’s corporate records reflect that the defendant’s home address is the same as the Company’s former business address.

8. The defendant was a person required to collect, truthfully account for, or pay over the employment taxes of the Company.

9. The defendant willfully failed to collect, truthfully account for, or pay over the employment taxes of the Company.

10. A delegate of the Secretary of the Treasury made trust fund recovery penalty assessments under 26 U.S.C. § 6672 against the defendant for the periods and in the amounts described below. The amounts represent the unpaid portion of the income and Federal Insurance Contributions Act taxes withheld from the wages of employees of the Company and held in trust for payment to the United States. These assessments have balances due with interest and costs as of October 19, 2020, as follows:

Tax Period Ending	Amount Assessed	Balance Due as of 10/19/2020
3/31/2012	\$4,491.11	\$5,303.42
6/30/2012	\$9,240.12	\$10,911.39
9/30/2012	\$9,288.39	\$10,968.38
12/31/2012	\$10,858.38	\$12,822.36
3/31/2013	\$9,524.00	\$11,247.53
6/30/2013	\$15,010.11	\$17,725.00
9/30/2013	\$14,011.31	\$16,545.54
12/31/2013	\$13,962.27	\$16,487.63
3/31/2014	\$12,582.12	\$14,857.85
6/30/2014	\$14,398.57	\$17,002.86
9/30/2014	\$15,930.54	\$18,811.91
12/31/2014	\$10,832.93	\$12,792.29
3/31/2015	\$9,018.31	\$10,649.45
6/30/2015	\$10,655.61	\$12,582.91
9/30/2015	\$8,954.56	\$10,574.18
12/31/2015	\$9,876.32	\$11,662.65

3/31/2016	\$6,627.28	\$7,825.97
6/30/2016	\$12,375.43	\$14,613.79
9/30/2016	\$13,609.39	\$15,585.14
12/31/2016	\$9,230.80	\$10,571.02
3/31/2017	\$7,629.55	\$8,737.27
Total		\$268,278.54

11. Notice of the liabilities described in paragraph 10 was given to, and payment demanded from, the defendant.

12. Despite proper notice and demand, the defendant has failed, neglected, or refused to fully pay the liabilities described in paragraph 10, and after the application of all abatements, payments, and credits, he remains liable to the United States in the amount of \$268,278.54, plus statutory additions and interest accruing from and after October 19, 2020.

WHEREFORE, the plaintiff United States of America requests the following relief:

- A. Judgment against defendant James A. Fleming for income tax liabilities for the periods ending December 31, 2006 through December 31, 2008, in the amount of \$196,491.86, plus statutory additions and interest accruing from and after October 19, 2020, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c);
- B. Judgment against defendant James A. Fleming for trust fund liabilities under 26 U.S.C. § 6672 for the quarterly periods ending March 31, 2012 through March 31, 2017 (21 quarters total), in the amount of \$268,278.54, plus statutory additions and interest accruing from and after October 19, 2020, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c); and

- C. The United States of America shall recover its costs and be awarded such other and further relief as the Court determines is just and proper.

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